

Supreme Court, U.S.  
FILED

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No. ALEXANDER L. STEVAS  
CLERK

In The  
Supreme Court of the United States  
October Term, 1983

RITA RIZZUTO,

*Respondent,*

vs.

LEANDRO RIZZUTO,

*Petitioner.*

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**PETITION FOR WRIT OF CERTIORARI  
TO THE APPELLATE DIVISION  
OF THE SUPERIOR COURT OF NEW JERSEY**

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Dated: November 23, 1983

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## QUESTION PRESENTED

Does the Full Faith and Credit Clause of the United States Constitution limit the power of a state court to modify a judgment of a sister state only to the extent and only under the circumstances that the judgment could have been modified in the sister state?

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1983

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RITA RIZZUTO,

*Respondent,*

-v.-

LEANDRO RIZZUTO,

*Petitioner.*

---

**PETITION FOR A WRIT OF CERTIORARI  
OPINIONS BELOW**

The opinion of the Supreme Court of the State of New Jersey denying petitioner's petition for certification to appeal from the decision of the Appellate Division of the Superior Court of New Jersey not yet reported appears in the Appendix at App. 1a. The opinion of the Supreme Court of New Jersey dismissing petitioner's notice of appeal from the judgment of the Appellate Division of the Superior Court of New Jersey appears in the Appendix at App. 2a.

The opinion of the Appellate Division, Superior Court of the State of New Jersey, not yet reported, appears in the Appendix at App. 4a. The order signed by Judge Irving W. Rubin in the Trial Court, Supreme Court of the State of New Jersey based on the decision of Judge Donald F. Campbell appears in the Appendix

at App. 6a. The Decision of Judge Donald F. Campbell in the Trial Court, Superior Court of the State of New Jersey not yet reported appears in the Appendix at App. 14a.

## JURISDICTION

The judgment and opinion of the Appellate Division, Superior Court of the State of New Jersey was entered on June 16, 1983. A timely petition for certification to the Supreme Court of the State of New Jersey was denied on September 9, 1983. A notice of appeal to the Supreme Court of New Jersey from the judgment of the Appellate Division of the Superior Court of New Jersey was also dismissed on September 9, 1983. This petition for certiorari is being filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257 (3).

## STATUTORY PROVISIONS INVOLVED

United States Constitution, Article IV, Section I:

"Full Faith and Credit shall be given in each state to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general laws prescribe the manner in which Acts, Records and Proceedings shall be proved, and the effect thereof."

## HOW WAS THE FEDERAL QUESTION PRESENTED IN THE STATE COURTS

The petitioner herein has maintained from the beginning that the Full Faith and Credit Clause of the United States Constitution limited the power of the courts of New Jersey to modify the alimony awarded to the respondent in a judgment of divorce rendered in

the courts of New York only to the extent and under the circumstances permitted in the courts of New York.

The petitioner first raised this constitutional issue in the trial court on a motion to dismiss the respondent's lawsuit. This point was also included in the petitioner's trial memorandum and later in his brief in the Appellate Division. The issue was again raised in petitioner's motion for certification to the New Jersey Supreme Court and in its notice of appeal to the New Jersey Supreme Court.

#### STATEMENT OF THE CASE

LEANDRO RIZZUTO and RITA RIZZUTO, the petitioner and respondent respectively, were married in the State of New York on or about February 14, 1960, and continuously resided there until their divorce in 1975.

On September 26, 1975, both the petitioner and respondent entered into a Separation Agreement. The Separation Agreement provided for substantial alimony payments to the respondent and settled all property rights between the petitioner and respondent.

Thereafter, while both the petitioner and respondent were still domiciliaries of New York, the respondent procured a final bilateral judgment of divorce from the petitioner. The Separation Agreement was incorporated into but did not merge in the New York judgment.

The Petitioner then moved to the State of New Jersey. The respondent moved to New Jersey in 1977.

The respondent brought an action in the Superior Court of the State of New Jersey to obtain an increase in alimony payments and to modify other relief incorporated in the New York judgment of divorce. The petitioner appeared in the action and filed his answer. From the beginning, the petitioner has maintained that under the Full Faith and Credit Clause of the United States Constitution, the New Jersey courts had to apply the substantive law of New York in deciding the question of whether the respondent had a right to have the alimony provided for in the New York judgment of divorce increased.

The petitioner pointed out that the New York rule concerning the modification of alimony provided for in a Separation Agreement that had been incorporated, but not merged into a judgment of divorce, was set forth by the New York Court of Appeals in *McMains v. McMains*, 15 NY2d 93, 206 N.E. 2d 185 (1965). The highest New York court clearly stated in that case that a wife did not have a right to an increase in alimony as the husband prospered. The Court in the *McMains* case concluded that when the alimony provided for in a Separation Agreement that had been incorporated but not merged into a judgment of divorce, such alimony may be modified only if the wife was in danger of becoming a public charge.

The law of the State of New Jersey was similar to that of New York until the decision of *Lepis v. Lepis*, 83 NJ 139, 416 A2d 45 (1980). In that case the Supreme Court of New Jersey permitted an increase in the alimony already provided for in a Separation Agreement upon the wife's showing of changed circumstances. In that case the changed circumstances was the increase in the cost of living due to the runaway inflation suffered in the latter 1970's.

The New Jersey trial court granted the respondent's request and increased the alimony payment due her by disregarding the New York law and applying its own law. The Appellate Division of the Superior Court of New Jersey affirmed the decision of the trial court. The Supreme Court of New Jersey denied petitioner's motion for certification and dismissed his notice of appeal.

### **REASONS FOR GRANTING THE WRIT**

The decision of the Appellate Division, Superior Court of the State of New Jersey is in direct conflict with the decisions of the Supreme Court of the United States which require that pursuant to the Full Faith and Credit Clause of the United States Constitution, the judgments of one state should be given full faith and credit by the courts of its sister states.

The Federal Constitution was designed to weld the states into one nation. The interstate enforcement of judgments and decrees is an issue which grows in importance as the mobility of this country's population increases.

The U. S. Supreme Court, in *Johnson v. Muelberger*, 340 U.S. 581 (1940), stated in referring to the effect of the Full Faith and Credit Clause of the United States Constitution on the decisions of the state courts:

"There is substantially no legislative history to explain the purpose and meaning of the clause and of the statute. From judicial experience with the interpretation of the clause, there has emerged the succinct conclusion that the Framers intended it to help weld the

independent states into a nation by giving judgments within the jurisdiction of the rendering state the same faith and credit in sister states as they have in the state of the original forum. The faith and credit given is not to be niggardly but generous, full. (L)ocal policy must at times be required to give way, such is part of the price of our federal system.

This constitutional purpose promotes unification, not centralization. It leaves each state with power over its own courts but binds litigants, wherever they may be in the Nation, by prior orders of other courts with jurisdiction. One trial of an issue is enough. The principles of res judicata apply to questions of jurisdiction as well as to other issues as well to jurisdiction of the subject matter and of the parties. The federal purpose of the clause makes this Court, for both state and federal courts, the final arbiter when the question is raised as to what is a permissible limitation on the Full Faith and Credit Clause." (Page 584 and 585)

It is respectfully submitted that the U. S. Supreme Court has consistently followed the approach of looking to the law of the rendering jurisdiction to determine the force, effect and extent to be given a judgment of a sister state under the Full Faith and Credit Clause of the U. S. Constitution.

In *Aldrich v. Aldrich* 378 U.S. 540 (1963), a Florida divorce judgment was awarded to Mrs. Aldrich and provided that the monthly alimony was to become a charge on Mr. Aldrich's estate if he were to die. Mr. Aldrich subsequently died as a domiciliary of West Virginia and his wife filed a claim for alimony against his estate in West Virginia.

The United States Supreme Court held that West Virginia must apply the substantive law of Florida in

determining the post-judgment alimony obligations under the Florida divorce decree.

In *Barber v. Barber*, 323 U.S. 78 (1944), the Court dealt with the enforcement of a judgment for alimony in Tennessee that was rendered in North Carolina. Again the husband claimed that since the judgment was modifiable under the laws of North Carolina, the Tennessee courts did not have to afford it full faith and credit. Again the Supreme Court scrutinized the laws of the state rendering the judgment to determine this issue. The court concluded at Page 86 of its decision:

"Upon *full consideration* of the law of North Carolina, we conclude that respondent has not overcome the *prima facie* validity and finality of the judgment sued upon." (Emphasis added)

The Supreme Court removed any doubt as to the extent of modification permitted by the forum state in *New York ex rel Halvey v. Halvey*, 330 U.S. 610 (1946). On Page 614 of the *Halvey* decision, the court stated:

"so far as the Full Faith and Credit Clause is concerned, what Florida could do in modifying the decree, New York may do."

In concluding its decision, the Court set forth the gravamen of its investigation:

"It is not shown that the New York court in modifying the Florida decree exceeded the limits permitted under Florida law." (Page 615)

Based on the foregoing, it is beyond dispute that the decision rendered by the New Jersey courts in this lawsuit is in direct conflict with the prior decisions of the U. S. Supreme Court. New Jersey did what New York could not do. It has been the policy of this Court to grant petitions for certiorari where it is evident that a decision of a state court is in conflict with a decision of this Court.

The petitioner respectfully submits that the policy set down in the prior decisions of the U. S. Supreme Court supporting uniformity and judicial symmetry is preferable to the system followed by the New Jersey court which if permitted to stand could reduce this nation to a collection of fifty independent states applying their own law as they saw fit.

### **CONCLUSION**

Based on the foregoing, the instant writ of certiorari should be granted and this Court should review the application of the Full Faith and Credit Clause of the United States Constitution to the decision rendered by the New Jersey court in this lawsuit.

Respectfully submitted,

**JOHN G. HALL**  
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**APPENDIX "A"**  
**ON PETITION FOR CERTIFICATION**

**SUPREME COURT OF NEW JERSEY**  
**SEPTEMBER TERM, 1983**

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RITA RIZZUTO,

*Plaintiff-Cross-Petitioner,*

-v.-

LEANDRO RIZZUTO,

*Defendant-Cross-Respondent.*

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To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5421-81T2 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert L. Clifford,  
Presiding Justice, at Trenton, this 7th day of  
September, 1983.

s/Stephen W. Townsend  
Clerk

Filed September 9, 1983

**APPENDIX "B"**  
**DECISION OF SUPREME COURT**  
**ON RULE R:2:12-9**

**SUPREME COURT OF NEW JERSEY**  
**SEPTEMBER TERM 1983**

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RITA RIZZUTO,

*Plaintiff-Respondent,*

vs.

LEANDRO RIZZUTO,

*Defendant-Petitioner.*

---

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5421-81T2 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs; and it is further

ORDERED that the appeal in the within matter is dismissed pursuant to R. 2:12-9.

WITNESS, the Honorable Robert L. Clifford,  
Presiding Justice, at Trenton, this 7th day of  
September, 1983.

s/Stephen W. Townsend  
Clerk

Filed September 9, 1983

**APPENDIX "C"**  
**OPINION OF APPELLATE DIVISION**

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE COMMITTEE ON OPINIONS**

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**

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RITA RIZZUTO,

*Plaintiff-Respondent-*  
*Cross-Appellant,*

v.

LEANDRO RIZZUTO,

*Defendant-Appellant-*  
*Cross-Respondent.*

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Argued May 31, 1983—Decided June 16, 1983.

Before Judges Morton I. Greenberg and Furman.

On appeal from Superior Court, Chancery Division, Ocean County.

John G. Hall argued the cause for appellant.

Alvin H. Gelb argued the cause for respondent  
(Robert B. Silverman, on the brief).

**PER CURIAM**

We affirm substantially for the reasons stated by Judge Campbell in his oral opinion of June 4, 1982. See *Lepis v. Lepis*, 83 N.J. 139, 148 (1980); *Robison v. Robison*, 9 N.J. 288, 293 (1952), cert. den. 344 U.S. 829 (1952); *N.Y. Dom. Rel. Law* §236 (McKinney 1977).

APPENDIX "D"  
ORDER SIGNED BY JUDGE IRVING W. RUBIN  
FILED JULY 28, 1982

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: OCEAN COUNTY

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RITA RIZZUTO,

*Plaintiff,*

v.

LEANDRO RIZZUTO,

*Defendant.*

---

This matter having been decided by the Court on June 4, 1982 in the presence of Alvin H. Gelb, Esq., attorney for plaintiff and John G. Hall, Esq., attorney for defendant, and based upon the Briefs and Affidavits filed by the respective parties;

And the Court having considered the following issues in this matter:

1. Whether the plaintiff wife's alimony should be increased.
2. Whether or not the support for the daughter, Rita, age sixteen, should be increased.

3. Whether or not unpaid tutoring and medical bills for the daughter, Rita, should be paid by the husband.

4. Whether or not the defendant father should be required to pay for the college education of Dennis and allegedly unpaid medical bills from Dr. Finkenstein in the sum of \$195.00.

5. Whether or not the defendant, father should be compelled to pay for Leandro to go to college.

6. Whether or not defendant should be compelled to turn fifty shares of ABC stock, together with certain dividends allegedly paid to husband while the stock was in the husband's possession over to plaintiff.

7. Whether or not the wife is entitled to equitable distribution of assets represented by either shares of stock in a Delaware corporation owned by Conair Corp. and valued at the time of divorce at approximately \$4,000,000.00 or real estate in New Jersey owned by the Delaware corporation, said assets having been in the name of the husband only.

8. Attorney's fees for the plaintiff, wife's attorney.

9. Arrearages on child support in the sum of \$3,450.00.

The Court makes the following findings:

a. There are no material facts in genuine dispute and, therefore, there is no need of a hearing.

b. The facts mentioned earlier in the oral opinion relative to the marriage, the Final Judgment, Property Settlement Agreement and the data relative to the names, ages and status of the children are not in dispute and are hereby incorporated in these findings.

c. The Court finds there is a change in circumstances shown by the wife relative to her needs and the needs of the parties' sixteen-year old daughter, Rita.

d. I find that the defendant, husband, has earnings in excess of a quarter million dollars per year.

e. The Court finds that the plaintiff, wife, has no income and should not be expected, in view of her present situation, at the present time, to seek employment.

f. The Court finds the husband's needs are well below his income level and that as a matter of fact, this was a stipulation agreed to between the parties making unnecessary any discovery on the part of the wife as to the husband's earnings. If that were not stipulated, then I would have permitted the wife discovery.

g. The Court finds that the wife's needs, to include those of the daughter, Rita, are increased to a total amount of \$560.00 per week.

h. The Court finds that both the wife and her attorney were aware of the existence of assets in the name of the defendant, husband at the time of the New York divorce in the form of shares of stock in Conair Corporation and that the corporation owns cer-

tain real estate in the State of New Jersey, all of which was valued at approximately four million dollars at the time of the divorce and that the present value of these assets has grown in the intervening years in excess of ten million dollars.

i. The Court finds that the status of the law of the State of New York at the time the divorce was entered and the Property Settlement Agreement was signed was such that the assets in the name of husband alone were not subject to any rights the wife may have had and that, therefore, they were not considered by the Court in its decision, nor were they mentioned in the Property Settlement Agreement or Final Judgment. This finding is the result of the Court's understanding that the parties were essentially stipulating to those facts and also based upon an Affidavit received by the Court.

j. The Court finds that an increase in support is necessary because the changed circumstances substantially impair the ability of the wife and the child, Rita, to maintain the standard of living reflected in the original Decree and Agreement.

k. That the existing support arrangement did not provide for the circumstances alleged as "changed" and, therefore, the modification was considered.

l. The New York Final Judgment provided that the Supreme Court of the State of New York retains jurisdiction of the matter as previously stated.

m. That Paragraph No. 16 of the Property Settlement Agreement states that the law of the State of

New York shall govern all matters affecting the interpretation of the Property Settlement Agreement.

n. That Paragraph No. 18 states that the provisions of the Agreement shall not be modified except by written instrument signed by the parties.

o. The substantive law of the State of New York at the present time does not permit an increase in alimony under the facts of this case unless the wife is in danger of becoming a public charge. The leading case was decided by the New York State Court of Appeals in 1965, McMains v. McMains, 15 N.Y. 2d 283, 258 N.Y.S. 2d 93. The parties have stipulated to the present status of the substantive law of the State of New York.

p. The Court finds that the letter dated February 1, 1979 from Solomon Ferzinger, Esq. which was signed by the wife's attorney constituted a release by the wife as to the \$3,000.00 which she is seeking in arrearages.

q. This decision by the Court is made retroactive to June 19, 1981 in accordance with the stipulation entered into by the parties.

r. Both the husband and wife have lived in Lakewood, New Jersey for over four years.

s. Both the husband and wife were residents of the State of New York at the time the New York judgment of divorce was entered.

It is therefore, on this 21st day of July, 1982

**ORDERED as follows:**

1. That the wife's support be increased from \$250.00 per week to \$400.00 per week retroactive to June 19, 1981.
2. That the support for the sixteen year old child, Rita, be increased from \$100.00 per week to \$160.00 per week retroactive to June 19, 1981.
3. That the husband's application for a stay of the two aforementioned increases pending appeal is denied.
- 3a. That all lump sums and any retroactive payments shall be made within thirty days from June 4, 1982.
4. Attorney fees in the amount of \$7,000.00 awarded to Mr. Gelb and are to be paid within thirty days from June 4, 1982.
5. The wife's application for equitable distribution of the assets in the name of the husband alone at the time of the Final Judgment entered by the New York Court are denied since the Court finds that the New York Decree disposed of all the issues of the marriage at the time of the Final Judgment. The Court finds there was no specific mention of these assets in the name of the husband alone, and applying the rationale applied in the Healy vs. Healy case cited by the attorneys, in August, 1977, Appellate Division case, it could be argued that since the Court made no disposition of those assets that New Jersey should now dispose of them under the current New Jersey law. The case in the Court's opinion can be distinguished in

too many important respects and does not govern under the facts of this case.

6. The parties stipulated that the issue of support for the child, Rita, was properly before the Court and, therefore, the Court need not address itself to that legal issue.

7. The parties stipulated that the issue relative to the \$450.00 in arrears should be decided by the Court and, accordingly, the Court orders that the husband pay that amount to the wife within thirty days of June 4, 1982.

8. Wife's application for the \$3,000.00 in arrearages is denied.

9. Based upon the Lepis v. Lepis decision and despite the arguments made by the husband, defendant, that the New York Final Judgment must be given full faith and credit, the Court finds that the New Jersey Court should decide the issue as to whether or not the wife is entitled to an increase in alimony under the facts of this case.

10. The Court further orders that the fifty shares of ABC stock are to be turned over to the wife, together with \$257.50 dividends that accrued while this stock was in the possession of the husband.

11. That with regard to the dividends on the 100 shares of ABC stock, that were previously held by the husband, that sum is to be submitted by separate letter to the Court for further consideration.

12. That the private tutoring bills and medical bills of the daughter, Rita, are to be paid forthwith by the husband.

13. That the medical bill in the sum of \$195.00 paid to Dr. Finkelstein for son, Dennis, is to be reimbursed to the wife.

s/Irving W. Rubin  
J.S.C.

**APPENDIX "E"**  
**STENOGRAPHIC TRANSCRIPT OF**  
**JUDGE'S DECISION**

**SUPERIOR COURT OF NEW JERSEY**  
**CHANCERY DIVISION: OCEAN COUNTY**  
**Docket No. M-15626-80; App. Div. Docket No. A-**

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**RITA RIZZUTO,**

*Plaintiff,*

-vs.

**LEANDRO RIZZUTO,**

*Defendant.*

---

Place: Ocean County Courthouse, Roms River,  
New Jersey

Date: June 4, 1982

**BEFORE:**

THE HONORABLE DONALD F. CAMPBELL,  
J.S.C.

**TRANSCRIPT ORDERED BY: JOHN G. HALL, Esq.**

**APPEARANCES:**

ALVIN H. GELB, Esq.  
Attorney for Plaintiff

JOHN G. HALL, Esq.  
Attorney for Defendant

Reporter: DAVID G. VORSTEG, C.S.R.

\* \* \*

issue, and if you want to bring it out by writing me a letter that I mentioned the issue altogether, then I will reconsider that issue by itself later.

MR. GELB: Just a moment on that, sir. The defendant admits that he kept all the dividends from the time he was supposed to turn the stock over.

THE COURT: The order from what, I know about the facts, you will get it. However, I want to spell it out carefully. I would like you to write me a letter. Show me where you mention it and make the application. I don't want to do it, now, Mr. Gelb.

27. My findings are as follows:

(a) There are no material facts in genuine dispute and, therefore, I find that there is no need of a hearing.

(b) The facts mentioned earlier in this opinion relative to the marriage, the final judgment, property settlement agreement and the data relative to the names, ages and status of the children are not in dispute and are hereby incorporated in my findings.

(c) I find that there is a change in circumstances shown by the wife relative to her needs and the needs of the parties' 16 year old daughter.

(d) I find that the defendant, husband, has earnings in excess of a quarter of a million dollars per year.

(e) I find that the plaintiff, wife, has no income and should not be expected in view of her present situation at the present time to seek employment.

(f) I find that the husband's needs are well below his income level, and I believe that as a matter of fact this was a stipulation agreed to by the parties making unnecessary any discovery on the part of the wife as to the husband's earnings. If that were not stipulated, if that had not been stipulated to, then I would have permitted the wife discovery.

(g) I find that the wife's needs, to include those of the daughter, are increased to a total amount of \$560.00 per week.

(h) I find that both the wife and her attorney were aware of the existence of assets in the name of the defendant, husband, in the form of shares of stock in the Conair Corporation and that the corporation owns certain real estate in the State of New Jersey, all which was valued at approximately \$4,000,000 at the time of the divorce and that the present value of those assets has grown in the intervening years to in excess of \$10,000,000.

(i) I find that the status of the law in the State of New York at the time the divorce was entered and the property settlement agreement was signed was such that the assets in the name of husband alone were not subject to any rights the wife may have had and that, therefore, they were not considered by the Court in its decision, nor were they mentioned in the property settlement agreement or final judgment. This finding is the result of my understanding that the parties are essentially stipulating to those facts and also based upon an affidavit I received yesterday, I believe,

although it had been the subject of much discussion between the two attorneys and myself.

(j) I find that an increase in support is necessary, because the changed circumstances substantially impair the ability of both the wife and the child, Rita, to maintain the standard of living reflected in the original decree and agreement.

(k) The existing support arrangement has not provided for the circumstances alleged as "changed," and therefore the modification was considered.

(l) The final judgment provides that the Supreme Court of the State of New York retains jurisdiction of the matter as previously stated.

(m) Paragraph 16 of the property settlement agreement states that the law of the State of New York shall govern all matters affecting the interpretation of the property settlement agreement.

(n) Paragraph 18 states that the provisions of this agreement shall not be modified except by written instrument signed by the parties.

(o) The substantive law of the State of New York at the present time does not permit an increase in alimony under the facts of this case unless the wife is in danger of becoming a public charge. The leading case was decided by the New York State Court of Appeals in 1965, McMains v. McMains, 15 N.Y. 2d 283, 258 N.Y.S. 2d 93. I believe that the parties have stipulated to the present status of the substantive law of the State of New York.

(p) I find that the latter dated February 1, 1979, from Solomon Ferzinger—

MR. HALL: Ferzinger.

THE COURT: I will spell that, F-e-r-z-i-n-g-e-r, Esquire and forwarded to the wife's attorney for his signature constituted a release by the wife of any right she may have had to the \$3,000 allegedly owed to her by the husband, said sum representing arrears.

(q) This decision is as a result of a stipulation entered into by the parties retroactive to the date of June 19, 1981.

(r) Both the husband and wife have lived in Lakewood, New Jersey, for over four years.

Now, Paragraph 28, based upon the foregoing findings I hereby order as follows:

(1) That the wife's support be increased from \$250.00 per week to \$400.00 per week retroactive to June 19, 1981.

(2) That the support for the 16 year old child, Rita, be increased from \$100.00 per week to \$160.00 per week retroactive to June 19, 1981.

(3) That the husband's application for a stay of the two aforementioned increases pending appeal is denied. I reversed the tentative decision I had made in our discussions, because I'm satisfied she owns the marital residence outright. She has the wherewithal to return any funds if the Appellate Division or some other Court should reverse this decision, so I would want that money paid right away.

MR. HALL: Including the arrears, Judge, or prospectively?

THE COURT: All arrears, all the money. I think to do otherwise is simply encouraging appeals. I don't want to do that, although I understand you are probably going to appeal, anyway.

MR. HALL: You are not encouraging it, Judge.

THE COURT: Okay. The lump sum and any retroactive payments will be made within 30 days from this date.

(4) Attorney's fees in the amount of \$7,000 awarded to Mr. Gelb and are to be paid within 30 days from this date.

(5) The wife's application for equitable distribution of the assets in the name of the husband alone at the time of the final judgment entered by the New York Court are denied. I find that the New York decree disposed of all the issues of the marriage existing at the time of the final judgment. There was no specific mention of those assets in the name of the husband alone, and applying the rationale applied in the Healy v. Healy case cited by the attorneys, it's an August, 1977, Appellate Division case, it could be argued that since the Court made no disposition of those assets that New Jersey should now dispose of them under the current New Jersey law. The case can be in my opinion, however, distinguished in too many important respects and does not govern under the facts of this case.

(6) The parties stipulated that the issue of support for the child, Rita, was properly before the Court and, therefore, I need not address that legal issue.

(7) The parties stipulated that the issue relative to the \$450.00 in arrears should be decided by this Court, and I order that the husband pay that amount within 30 days to the wife.

(8) The wife's application for the \$3,000 in arrearages is denied.

(9) Based upon the Lepis v. Lepis decision and despite the arguments made by the husband, defendant husband, that the New York final judgment must be given full faith and credit, I believe that the New Jersey Courts should decide the issue as to whether or not the wife is entitled to an increase in alimony under the facts of this case.

Gentlemen, are there any issues which I have failed to decide other than the one Mr. Gelb brought out earlier?

MR. GELB: Turn over, of course, of the fifty shares of stock.

THE COURT: It's going to happen today.